



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,155	01/31/2002	Nathalie Geffroy	05725.0842-00	5485

7590 11/14/2003

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 11/14/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/059,155

Applicant(s)

GEFFROY, NATHALIE

Examiner

Shengjun Wang

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-152 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims withdrawn from consideration are 4,6,7,9,11-14,29,31,67,74,76,77,79,81-84,99,101,115,117,118,120,122-125,140 and 142.

Continuation of Disposition of Claims: Claims rejected are 1-3,5,8,10,15-28,30,32-66,68-73,75,78,80,85-98,100,102-114,116,119,121,126-139 and 141-152.

DETAILED ACTION

1. Claims 67, and 4, 6-7, 9, 11-14, 29, 31, 74, 76-77, 79, 81-84, 99, 101, 115, 117-118, 120, 122-125, 140, and 142 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

2. Applicant's election with traverse of invention group I in Paper No. 5 is acknowledged. The traversal is on the ground(s) that search of all the invention is not seen as an undue burden and all the invention are in the same class and subclass. This is not found persuasive because search of invention group II is not required for the search of invention group I. Further the search is not limited to patent literature.

The requirement is still deemed proper and is therefore made FINAL.

The claims have been examined insofar as they read on elected invention and species.

Claim Rejections 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5, 8, 10, 15-28, 30, 32-66, 68-73, 75, 78, 80, 85-98, 100, 102-114, 116, 119, 121, 126-139, 141, and 142-152 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leverett (US 6,299,891, IDS), in view of Ethox Chemicals (IDS).

Art Unit: 1617

5. Leverett teaches a cosmetic composition comprising a “plasticizer” and a metal soap, wherein the “plasticizer” is any of water soluble plasticizers, the most preferred “plasticizers” include polyethylene glycol, and polyethylene glycol esters; and the preferred metal soap is sodium stearate. See, particularly, column 1, line 66 to column 2, lines 5. column 2, lines 42-51. The amount of the “plasticizer” is in the range of 0.5% to 25% by weight, and preferred 5%-20%, and most preferred 7-10%. Column 2, lines 25-28. The amount of metal soap is about 2-15%, preferred 3-10%, and most preferred 4-8%. See, column 2, lines 59-62.

6. Leverett does not teach expressly the particularly combination of the particular PEG ester, PEG 150 dibehenate and sodium stearate.

7. However, Ethox chemical teaches that PEG 150 dibehenate is particular made for personal care product known as superior viscosity builder, excellent viscosifier for both aqueous and aqueous-alcohol system, cost effective building block for gel formulations, and providing ‘after-feel’ and conditioning in skin care and ethnic hair care products. See the entire document.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ the PEG 150 dibehenate as the “plasticizer” in Leverett’s cosmetic composition.

A person of ordinary skill in the art would have been motivated to employ the PEG 150 dibehenate as the “plasticizer” in Leverett’s cosmetic composition because of the known superiorities of PEG 150 dibehenate. Further, the optimization of a result effective parameter, e.g., amounts of each of the ingredients, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215.

Art Unit: 1617

8. Claims 1-3, 5, 8, 10, 15-28, 30, 32-66, 68-73, 75, 78, 80, 85-98, 100, 102-114, 116, 119, 121, 126-139, 141, and 142-152 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ethox Chemicals (IDS), in view of Kasat et al (US 6,165,480, IDS).

9. Ethox chemical teaches that PEG 150 dibehenate is particular made for personal care product known as excellent viscosifier for both aqueous and aqueous-alcohol system, cost effective building block for gel formulations, cost effective building block for gel formulations, and providing 'after-feel' and conditioning in skin care and ethnic hair care products. See the entire document.

10. Ethox chemical does not teaches expressly a cosmetic composition comprising fatty acid gellant, such as sodium stearate, and the PEG 150 dibehenate, or adding the PEG 150 dibehenate to a cosmetic composition comprising the metal soap.

11. However, Kasat et al. discloses that sodium stearate, as, well as other metal soap are known gelling agent in cosmetic product.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make a cosmetic gel composition comprising both sodium stearate and PEG 150 dibehenate.

A person of ordinary skill in the art would have been motivated to make a cosmetic gel composition comprising both sodium stearate and PEG 150 dibehenate because it is prima facie obvious to combine two compositions each of which is taught in the prior art to be useful for same purpose in order to form third composition that is to be used for very the same purpose; idea of combining them flows logically from their having been individually taught in prior art; thus, the claimed invention which is a combination of two known gel forming agents sets forth

prima facie obvious subject matter. See In re Kerkhoven, 205 USPQ 1069. Further, the optimization of a result effective parameter, e.g., amounts of each of the ingredients, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215. Furthermore, the employment of other well-known cosmetic ingredients, such as water, in the composition is obvious since PEG 150 dibehenate is particularly known to be useful with water.

12. Claims 1-3, 5, 8, 10, 15-28, 30, 32-66, 68-73, 75, 78, 80, 85-98, 100, 102-114, 116, 119, 121, 126-139, 141, and 142-152 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuo et al. (JP 2002-003891), in view of Ethox Chemicals (IDS).

13. Katsuo et al. teaches a hair and body cleansing composition comprising A) a compounds of RBXBR, wherein R is a hydrophobic moiety, and X is hydrophilic moiety, and B is ether, ester, or urethane linkage, and B) an anionic surfactant, which may be an metal salt of fatty acid, wherein the metal ion may be an alkali metal. See particularly, the abstract.

14. Katsuo et al. does not teach expressly a particular combination of sodium stearate and PEG 150 dibehenate.

15. However, Ethox chemical teaches that PEG 150 dibehenate is particular made for personal care product known as superior viscosity builder, excellent viscosifier for both aqueous and aqueous-alcohol system, cost effective building block for gel formulations, and providing 'after-feel' and conditioning in skin care and ethnic hair care products. See the entire document.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make a composition according to Katsuo, wherein the first agent is PEG 150 dibehenate, and the anionic surfactant is sodium stearate.

Art Unit: 1617


A person of ordinary skill in the art would have been motivated to make a composition according to Katsuo, wherein the first agent is PEG 150 dibehenate, and the anionic surfactant is sodium stearate because PEG 150 dibehenate is particularly known for its superiorities as cosmetic ingredients. The employment of sodium stearate is seen to be a selection from amongst equally suitable material and as such obvious. Ex parte Winters 11 USPQ 2nd 1387 (at 1388). Further, the optimization of a result effective parameter, e.g., amounts of each of the ingredients, is considered within the skill of the artisan. See, In re Boesch and Sianey (CCPA) 204 USPQ 215. Furthermore, the employment of other well-known cosmetic ingredients, such as water, in the composition is obvious since PEG 150 dibehenate is particularly known to be useful with water.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner



Shengjun Wang
November 12, 2003